

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SHAMIKA W.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH Case Nos. L- 2005100513
L- 2005050534

DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard these matters in San Bernardino, California on January 4, 2006.

Vince Toms, Consumer Services Representative, Fair Hearings, Inland Regional Center appeared at the hearing and represented the service agency, Inland Regional Center.

Veronica Cervantes, Clients' Rights Advocate, Office of Client's Rights Advocacy, appeared at the hearing and represented the claimant, Shamika W. Tom DiVerde, attorney, Supervising Clients' Rights Advocate, also appeared at the hearing. The claimants' grandmother and legal guardian, Gail W., was also present at the hearing.

The record remained open for submission of written closing argument and the matter was submitted on February 23, 2006.

ISSUE PRESENTED

Issue 1: Should the service agency be required to continue to fund respite for the claimant?

Issue 2: Should the service agency be required to continue to fund community integration services for the claimant?

FACTUAL FINDINGS

1. Claimant Shamika W. ("Shamika ") is a 13 year-old child who receives services from the Inland Regional Center ("the service agency" or "the regional center"). Shamika is eligible for regional center services due to a diagnosis of mild mental retardation and she receives services from the service agency on that basis.

2. Shamika lives with her grandparents who are also her legal guardians. Shamika is a ward of the Juvenile Court in Los Angeles County and her case is managed by the Los Angeles County Department of Children and Family Services ("DCFS"). The County of Los Angeles ("the County") pays the claimant's grandparents \$1,097.00 per month in assistance known as Aid to Families with Dependent Children-Foster Care ("AFDC-FC"). AFDC-FC is paid to the claimant's grandparents in order to help them provide for the claimant's care and supervision. This assistance is not intended as an income source for the guardians, but is to be used to meet the special care needs of the child. The AFDC-FC benefits are to be used specifically for the child's care and supervision.

3. Shamika's family is currently receiving 29 hours of respite per month and that respite is funded by the regional center. It is undisputed that this respite is necessary to properly meet Shamika's needs. Respite services are intended to relieve families of the constant responsibility of caring for a family member with a developmental disability. Respite allows the parents or guardians to have a much needed break from the demanding task of caring for their child.

4. The regional center is also currently funding 39 hours per month for a community integration program, also known as social recreation services, for Shamika. Community integration is a social recreation program where a coach assists Shamika to go out into the community and participate in social recreation. Social recreation services are provided to help the claimant become involved in various social and recreational activities out in the community with the assistance of her social recreation coach. It is also undisputed that participation in a community integration program is necessary to properly meet Shamika's needs.

5. The service agency now seeks to terminate its funding for respite and social recreation services for the claimant. The service agency does not dispute the claimant needs these services nor does the service agency contest the reasonableness of the level of services the claimant is receiving. However, the service agency contends it should no longer fund these services under the Lanterman Developmental Disabilities Service Act ("the Lanterman Act"). The service agency maintains the AFDC-FC benefits being paid to the family should be used to cover the cost of respite and social recreation services for Shamika. The service agency therefore notified the family that the respite and recreation services would be terminated. The claimant filed a request for a fair hearing and the service agency continues to fund these services pending a resolution of this appeal.

6. The Regional Administrator (“the Administrator”) for DCFS in charge of the claimant’s case testified at the hearing that AFDC-FC funds are to be used for the care and supervision of children in foster care. Under the program, the funds should only be used to pay for reasonable and allowable costs for the care and supervision of the foster child. The Administrator opined that respite care and social recreation services provided under the Lanterman Act cannot be paid for by the County with AFDC-FC funds. Therefore, the County will not authorize any additional funds to pay for the claimant’s respite care or social recreation program. However, it is not clear from the evidence presented that the claimant’s family would be prohibited from using the AFDC-FC funds they already receive to pay for these services. The Administrator testified that the AFDC-FC recipient family does have flexibility in how they use the funds as long as they are using the funds to provide for Shamika’s care and supervision. Both respite care and social recreation involve the care and supervision of Shamika.

LEGAL CONCLUSIONS

1. Under the Lanterman Act (Welf. & Inst. Code §§ 4500 et. seq.), the State of California accepts responsibility for persons with developmental disabilities and provides treatment and habilitation services and supports. (Welf. & Inst. Code § 4501.) The state agency charged with implementing the Lanterman Act is the Department of Developmental Services (hereinafter referred to as “DDS”). The Lanterman Act authorizes DDS to contract with regional centers to provide developmentally disabled individuals with the necessary access to the services and supports they need. (Welf. & Inst. Code § 4620.) The services and supports provided by the regional center must be based upon the client’s developmental needs and should reflect the client’s wishes and preferences. (Welf. & Inst. Code §§ 4646, 4646.5, subd. (a)(1), (2) and (4), 4512, subd. (b), and 4648, subd. (a)(6)(E)).

2. When deciding an issue of services to be provided to a consumer, the service agency has a duty to provide services to a consumer that meet the consumer’s needs and preferences while being a cost-effective use of public resources as well. (Welf. & Inst. Code §§ 4640.7, subd. (b), 4646, subd. (a)). The service agency must also follow the intent of the Legislature as stated in Welfare and Institutions Code section 4646, subdivision (a) to provide services that take into account the needs and preferences of the consumer. The service agency is required to secure needed services and supports that will be effective in meeting the goals stated in the consumer’s individual program plan. (Welf. & Inst. Code §§ 4646, subd. (a) and 4648, subd. (a)(1).) The regional center is not required to provide all the services that a client requires, but is required to “find innovative and economical methods of achieving the objectives” of the client’s individual program plan (“IPP”) (Welf. & Inst. Code § 4651).

3. Welfare and Institutions Code section 4418.6 provides that respite care may be provided as part of a family care program for the developmentally disabled. Respite care is defined as “. . . temporary and intermittent care provided for short periods

of time.” The purpose of respite is to provide temporary care and supervision to a child in order to give relief to a parent or caregiver from the ongoing burden of caring for a demanding child.

4. California Code of Regulations, title 17, section 54302, subdivision (a)(64) defines social recreation as a community based program that provides the client with community integration and training in self-advocacy while the client learns to participate in recreation and leisure out in the community.

5. Welfare and Institutions Code section 4659, subdivision (a) provides that when a service agency makes decisions regarding purchase of service requests for consumers, the service agency is mandated to “identify and pursue all possible sources of funding for consumers receiving regional center services.” The service agency is mandated to consider all possible generic sources for funding the claimant’s needed services. (Welf. & Inst. Code § 4648, subd. (a)(8).) The service agency maintains that AFDC-FC benefits are a generic source that can be used to pay for respite and social recreation services. However, if a needed service is not provided by the generic agency, then the regional center must fill the gap and fund the service in order to adequately meet the goals set forth in the claimant’s IPP (Welf. & Inst. Code § 4648, subd. (a)(1); *Association for Retarded Citizens v. Department of Developmental Services*, (1985) 38 Cal. 3d 384, 390).

The evidence presented indicates that the DCFS will not authorize AFDC-FC funds to be used for respite care or social recreation services. The claimant presented evidence that established that the DCFS would not fund the programs in question. In the absence of evidence to the contrary, the service agency failed to meet its burden of proof required to discontinue the respite and social recreation program it already funds. It is unclear whether the service agency maintains the claimant’s family should use the AFDC-FC funds they already receive or whether the family should seek additional funding from the DCFS for these services. Either way, the evidence as presented establishes that the DCFS will not authorize the use of AFDC-FC funds for this purpose. In this situation, the service agency must “fill the gap” and fund the services until there is funding available from another source.

ORDER

1. The claimant’s appeal to require the service agency to continue to fund respite care is hereby granted.

2. The claimant’s appeal to require the service agency to continue to fund community integration services is hereby granted.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within the State of California.

DATED: May 17, 2006

GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings